

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

ISO New England Inc.
New England Power Pool

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Docket No. ER09-1051-000

**NOTICE OF INTERVENTION AND COMMENTS
BY THE
MASSACHUSETTS DEPARTMENT OF PUBLIC UTILITIES**

I. INTRODUCTION

Pursuant to Rule 214(a)(2) of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (FERC),¹ and the Commission's Combined Notice of Filings #1 dated May 1, 2009, the Department of Public Utilities of the Commonwealth of Massachusetts (Mass DPU) files this notice of Intervention and Comments in the captioned proceeding. This proceeding relates to the filing submitted by ISO New England Inc. ("ISO-NE"), joined in part by the New England Power Pool, in compliance with the Commission's Order No. 719 ("Compliance Filing").² Mass DPU files this Notice of Intervention and Comments in support of the Compliance Filing.

¹ 18 C.F.R. § 385.214(a)(2).

² *Wholesale Competition in regions with Organized Markets*, Order No. 719, 73 Fed. Reg. 64100 (October 28, 2008), FERC Stats. & Regs. ¶31,281 (2008) ("Order No. 719"), *reh'g pending*.

II. COMMUNICATIONS

Mass DPU requests that the person identified below be placed on the Commission's official service list in this proceeding and that all communications concerning this filing and future filings in this proceeding be directed to him:

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III. INTERVENTION

Mass DPU is the agency of the Commonwealth of Massachusetts charged with general regulatory supervision over gas and electric companies in Massachusetts and has jurisdiction to regulate rates or charges for the sale of electric energy and natural gas to consumers.

G. L. c. 164, ' 76 et seq. Therefore, Mass DPU is a state commission as defined by 16 U.S.C. ' 796(15) and 18 C.F.R. ' 1.101(k). This notice of intervention has been filed within the period established under Rule 210(b). Accordingly, Mass DPU hereby intervenes in this proceeding pursuant to Rule 214(a)(2).

IV. COMMENTS

A. Introduction

On October 17, 2008, the Commission issued Order No. 719, which makes reforms to the operation of organized wholesale electric markets in four areas: (1) demand response; (2) long-term contracting; (3) market monitoring; and (4) regional transmission organization ("RTO") and

independent system operators' responsiveness to customers. Order No. 719 required compliance filings from all the nation's RTOs.

On April 28, 2009, ISO-NE New England Inc. ("ISO-NE"), joined in part by the New England Power Pool ("NEPOOL"), submitted to the Commission its Compliance Filing regarding Order No. 719. Mass DPU files these comments in support of the Compliance Filing. In general, Mass DPU agrees that ISO-NE has already had in effect many policies and programs that the Commission is seeking to implement nation-wide and only a few changes to its practices and governing documents are needed. Further, Mass DPU supports the changes ISO-NE proposes. In the following subsections, Mass DPU breaks down our overall support of the Compliance Filing to the four areas specified by Order No. 719: (1) demand response; (2) long-term contracting; (3) market monitoring; and (4) ISO-NE's responsiveness to customers.

B. Demand Response

With respect to demand response, Order No. 719 requires that RTOs: (1) accept bids from demand response resources for ancillary services on a basis comparable to other resources; (2) eliminate, during a system emergency, a deviation charge/penalty to a buyer that takes less electric energy in the real-time than it purchased in the day-ahead market; (3) permit, in certain circumstances, an aggregator of retail customers to bid demand response on behalf of retail customers directly into the organized energy market; (4) modify their market rules, as necessary, to allow the market-clearing price, during periods of operating reserve shortage, to reach a level that rebalances supply and demand so as to maintain reliability; and (5) study whether further reforms are necessary. In response, ISO-NE claims that it is already in compliance with many of the requirements of Order No. 719.

Regarding ancillary services, ISO-NE describes its Demand Response Reserves Pilot Program (“DRR Pilot”), which it implemented in fall 2006 with the goal of determining whether smaller New England demand response resources (with a maximum load reduction of less than 5 MW) were willing and able to provide a reserve product comparable to that provided by central generating stations and combustion turbines. ISO-NE states that the early results of the DRR Pilot program indicate that demand resources in New England could respond to numerous interruption instructions over a season and that their response was generally within 30 minutes and (for some resources) response within 10 minutes might be practical. ISO-NE notes that many issues remain to be worked out, including a better measurement of the interruption performance during activation and, therefore, with the Commission’s approval, it has extended the duration of the DRR Pilot through May 2010.

Further, ISO-NE states that, in New England, there is a demand resource asset class known as Dispatchable Asset Related Demand (“DARD”), which is presently populated by pumped storage facilities, that participates in the energy and reserve markets. ISO-NE claims that the infrastructure developed for DARD can serve as a springboard for further enhancement of demand response participation in the ancillary markets.

ISO-NE proposes to modify its Market Rule 1 to prevent market participants with positive Real-Time Load Obligation Deviations from being allocated charges related to Real-Time NCPC Credits if the deviations occur within or are associated with applicable Load Zones during emergency conditions. The emergency conditions are delineated as the dispatch of Demand Resources, or the declaration of Operating Procedures No. 4 and/or No. 7, in any area within a Load Zone.

Finally, ISO-NE explains that, due to recent rule changes approved by the Commission, market participants have greater operational flexibility. ISO-NE explains that it now may dispatch instructions to market participants issue with active demand resources and it also now allows such market participants to manage a “portfolio” of individual retail customers (assets).³ Further, starting in June 2011, ISO-NE will use dispatch zones to determine the geographic location and dispatch of real-time demand response resources and real-time emergency generation resources.⁴ ISO-NE argues that these rule changes will allow ISO-NE to dispatch active demand resources in the quantities and locations needed by the system operator to alleviate reserve deficiencies, while enabling market participants to better comply with dispatch instructions.

Mass DPU supports ISO-NE’s proposed modifications to Market Rule 1, which will assist in developing demand response resources and further their integration into the wholesale electricity markets. Mass DPU recognizes that ISO-NE has been a leader among RTOs in this area because of steps it took to develop and integrate demand response resources prior to the issuance of Order No. 719, notably in the Forward Capacity Market. Further, Mass DPU appreciates ISO-NE’s acknowledgement that more needs to be done. Mass DPU notes that many demand response providers are frustrated that integration has not progressed more quickly. Mass DPU believes that more can be done to further integrate demand resources into the wholesale markets, particularly into the ancillary markets, as ISO-NE has intimated. Accordingly, Mass

³ *ISO New England Inc. and New England Power Pool*, Tariff Revisions Regarding Demand Resource Integration, Docket No. ER09-5 (October 1, 2008), accepted by the Commission in a letter order dated 10/29/08 in the same docket.

⁴ *ISO New England Inc. and New England Power Pool*, Tariff Revisions Regarding Elimination of the Reserve Margin Gross-Up for Demand Resources, Docket No. ER09-209 (October 31, 2008), approved by the Commission in *ISO New England Inc. and New England Power Pool*, 25 FERC ¶ 61,355 (2008).

DPU urges ISO-NE to maintain its leadership in this area and continue to be on the forefront of demand response development and integration. The Mass DPU looks forward to reviewing further details, including a timetable for implementation, from ISO-NE to more fully integrate demand response into the region's ancillary services markets on a more comparable basis to generating resources. Mass DPU encourages ISO-NE to provide such details and more fully complete this integration as soon as practicable.

C. Long-Term Contracting

With respect to long-term contracting, Order No. 719 requires RTOs to dedicate a portion of their websites for market participants to post offers to buy and sell power on a long-term basis. ISO-NE has presented to its stakeholders the general information⁵ that may be posted on the portion of ISO-NE's website that is dedicated to the posting of offers and bids for long-term energy transactions.

Massachusetts has promoted, allowed through regulation, and established through regulatory proceedings the use of long-term contracts as a means of supporting financial investment in renewable resources and their associated development costs (such as the transmission necessary to interconnect those resources). Long-term contracts with load on a delivered price basis can further the expansion of renewable resources in a manner that does not compromise, and instead diversifies competitive wholesale electricity markets. Furthermore, it does so without shifting the risks of generation development onto ratepayers through development subsidies, such as the socialization of generation interconnection costs in regional

⁵ The general information includes Type (bid/offer), Product or Service Type, Company, Contact Information, Location or Sub-Group, Schedule/Duration, Contract Size, Indicative Price, Attachments, Posted Dated, and Expiration Date.

transmission tariffs. With this in mind, the Mass DPU strongly supports ISO-NE's proposal because it will enhance access to information regarding long-term contracts by both buyers and sellers, further facilitating such contracts. Mass DPU looks forward to ISO-NE's continued discussions with market participants regarding future changes to its website involving long-term contracting.

D. Market Monitoring

Regarding market monitoring, Order No. 719 requires compliance with several rules relating to the independence and functions of market monitoring units ("MMUs") and information sharing. ISO-NE proposes numerous modifications to its existing market monitoring and mitigation provisions, including:

- Explicit statement that the Internal and External Market Monitors have access to data, resources and personnel;
- Clarification of oversight in ISO-NE's hybrid MMU structure;
- Respective functions of the Internal and External Market Monitors;
- Preparation of reports by the Internal and External Market Monitors;
- Notification of suspected tariff and regulatory violations;
- Clarification of roles of respective entities in mitigation;
- Conduct standards;
- Broader MMU mission statement;
- Centralized market monitoring tariff provisions; and
- Clarification of requirements for release of information to FERC, ISO-NE Board of Directors, Market Participants, and state commissions.

Mass DPU supports these proposed changes as they enhance the independence of and reporting by the Internal and External Market Monitors. Mass DPU notes that in response to a recent filing proposing changes to the forward capacity markets rules related to capacity imports, the Connecticut Department of Public Utility Control ("CT DPUC") has raised concerns regarding the performance of ISO-NE's Internal Market Monitor and has proposed changes to

New England's market monitoring structure.⁶ Mass DPU is very concerned with the allegations regarding the Internal Market Monitor's performance outlined those proceedings. While we support ISO-NE's changes proposed in its Compliance Filing and do not at this time propose further changes to the market monitoring structure, Mass DPU notes that these other proceedings may reveal the need for further changes, such as those proposed by CT DPUC. If so, Mass DPU will comment in those dockets on the need for any additional market monitoring changes beyond those proposed by ISO-NE here.

E. Responsiveness

Although Order No. 719 discussed RTO Responsiveness in five specific areas, it only required compliance filings in two of those areas: Board of Directors' responsiveness⁷ and posting of a mission statement.⁸ Accordingly, ISO-NE's compliance filing focuses on these areas, as do these comments.

1. Board of Director Responsiveness

As ISO-NE notes in its filing, ISO-NE has instituted a number of practices that ensure that communication between itself and the state commissions in New England occurs, including: twice annual meetings between the ISO-NE Board of Directors ("Board") and NECPUC commissioners,⁹ the assignment of individual Board members to one or more state public utilities commissions including period meetings between these individual Board members and

⁶ See Tariff Revisions Regarding Competitive Offer Requirement for Capacity Imports, *ISO New England Inc. and New England Power Pool*, Docket No. ER09-873-000 (filed Mar. 20, 2009); *Connecticut Department of Public Utility Control v. ISO New England*, Docket no. EL09-48-000 (filed Apr. 23, 2009).

⁷ Order No. 719, at ¶ 506

⁸ Order No. 719, at ¶ 556

⁹ Compliance Filing at 100.

commissioners,¹⁰ monthly briefing reports issued to states, and monthly conference calls with NECPUC staff.¹¹ In addition, ISO-NE has proposed changes to provide further transparency of ISO-NE Board processes and decision-making and is instituting practices to further its responsiveness to consumer organizations and consumer advocates.¹²

The Mass DPU believes these efforts will improve the transparency of ISO Board actions and will improve ISO-NE's responsiveness to consumer organizations and advocates. The Mass DPU supports and applauds these efforts.

2. Mission Statement

As ISO-NE notes, it currently has a set of 'objectives' set forth in the ISO-NE tariff as well as in the Participants' Agreement.¹³ Nonetheless, following a collaborative stakeholder process, ISO-NE proposes further incorporation of cost consciousness into its Mission Statement. The Mass DPU was deeply engaged in the debate among stakeholders over the mission statement.

ISO-NE explains that some stakeholders, citing transmission costs and recent transmission cost overruns in particular, suggested that the transmission planning process is not deriving lowest-cost solutions. Some of these stakeholders supported an alternative mission statement that ISO-NE describes in its filing. This alternative sought inclusion of a requirement that ISO-NE determine the "lowest reasonable cost" alternatives and "ensure just and reasonable rates."

¹⁰ Compliance Filing at 100.

¹¹ Compliance Filing at 104.

¹² Compliance Filing at 108-110.

¹³ Compliance Filing at 105.

The Mass DPU has strong concerns with proposals that ISO-NE be responsible for weighing the costs and benefits of particular transmission projects, and/or making policy decisions that could lead to not only selecting the alternative with the “lowest reasonable cost,” but as some stakeholders advocated, balancing costs and reliability. We believe that this would fundamentally and inappropriately change the role of ISO-NE. While the Mass DPU shares the underlying concerns related to transmission costs held by many of these stakeholders, we believe that ISO-NE must remain neutral with respect to market outcomes, and that the decisions balancing transmission costs, reliability, market structures, and other matters related to the public interest are policy decisions that are and must remain the responsibility of FERC and state commissions in their role as regulators.

Accordingly, the Mass DPU opposes the alternative mission statement described in ISO-NE’s filing and supports the mission statement proposed by the ISO-NE.

V. CONCLUSION

WHEREFORE, for the foregoing reasons, the Mass DPU hereby files this Notice of Intervention and respectfully requests that the Commission recognize the Mass DPU as an intervener in this proceeding and allow ISO-NE's proposed changes.

Respectfully submitted,

MASSACHUSETTS DEPARTMENT OF
PUBLIC UTILITIES

By its attorney,

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Date: May 26, 2009

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing document upon each party on the official service list compiled by the Secretary in this proceeding in accordance with Rule 2010 of the Commission's Rules of Practice and Procedure. 18 C.F.R. ' 385.2010.

Dated at Boston, Massachusetts, this 26th day of May, 2009.

/s/
John J. Keene, Jr.